IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2472 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAMODARBHAI KANJIBHAI VAMJA - Appellant(s)
Versus
ASHWINBHAI PRAGJIBHAI RATHOD & 1 - Defendant(s)

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Appearance :
MR MB PARIKH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
NOTICE SERVED for Defendant(s) : 1,
MR SHASHIKANT S GADE for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the original claimants challenging a judgment and award dated 3.5.2000 passed by the Motor Accident Claims Tribunal (Main), Amreli in MAC Petition No. 237 of 1996.

2. One Shri Chimanbhai Damodarbhai Vamja met with a vehicular accident on 5.3.1996 when he was travelling on his Hero Honda motor cycle. His motor cycle was hit by a luxury bus No. GJ-14T-28. In the ensuing impact, he received fatal injuries. His parents and younger siblings, therefore, filed the above mentioned claim petition seeking compensation of Rs.10 lakhs from the owner and the insurer of the luxury bus.

3. On the basis of the evidence on record, the Tribunal had no hesitation in holding that the driver of the luxury bus was solely responsible in causing the accident.

4. With respect to the quantum of compensation, the Tribunal believed the monthly income of the deceased at Rs.2,100/-. The Tribunal considering the age of the parents adopted the multiplier of 12 and found that the total computation of compensation could be worked out on that basis i.e. Rs.2100 x 12 x 12 = Rs.3,02,400/-. Since the claimants were parents, brothers and sisters of an unmarried person, the Tribunal found that they would receive only one-third of the total compensation. The Tribunal thus awarded a sum of Rs.1,00,800/- towards dependency

benefits. To this figure, the Tribunal added Rs.10,00/- towards loss to the estate and Rs.3,000/- for funeral expenses.

5. Before us, the claimants have, therefore, contended through their learned advocate that the Tribunal gravely erred in awarding a total compensation of Rs.1,13,800/- which is grossly inadequate. It is contended that the deceased was a qualified person, had bright academic career and was also employed in diamond polishing work. It is contended that there was sufficient documentary evidence on record to establish that the deceased was earning income of Rs.6,000/- per month.

6. On the other hand, on behalf of the opponents, it is contended that the award passed by the Tribunal calls for no interference.

7. Having heard the learned advocates appearing for the parties, we find that since the question of negligence of the luxury bus driver is not an issue before us, we need not examine the conclusion arrived at by the Tribunal in this appeal.

8. With respect to the quantum of compensation, we find that the award made by the Tribunal is on the lower side.

It may be noted that before the Tribunal there was documentary evidence to establish that the

deceased had passed his 12th standard examination with 64% marks. In addition thereto, he had cleared the course of ITI Turner with good marks. The deceased also held a driving license and had obtained a certificate for being employed as a conductor. The claimants had also produced several payment receipts of the deceased evidencing monthly payment for his employment in diamond polishing industry.

9. From the receipts produced on record, it can be seen that the deceased was receiving monthly payment in the range of Rs.3,500/- to Rs.4,600/-. The Tribunal, therefore, erred in believing the monthly income of the deceased at only Rs.2,100/-. We have no hesitation in holding that the deceased on the date of the accident itself was earning approximately Rs.4,500/- per month. The very fact that the deceased who in addition to having studied upto 12th standard with good marks and having obtained a certificate in ITI Turner course also with good marks and also possessed a driving license as well as license for being employed as a conductor, chose to engage himself in diamond polishing work would demonstrate that the receipts showing his monthly income of Rs.4,500/- were eminently reliable and believable. We have no reason to discard this evidence produced by the claimants. Thus, even ignoring the future prospect of increase in his income, the income of the deceased on the date of the accident can be safely taken as Rs.4,500/- per month. Considering that he was unmarried and the claimants

are his parents and other brothers and sisters and that the deceased would have in due course of time got married and supported his full family, one-third of the monthly income needs to be taken by way of dependency benefits for the claimants. The claimants would, therefore, have received Rs.1,500/- per month from the deceased or Rs.18,000/- per annum. Considering that the claimants include not only the parents of the deceased, who were approximately 44 years and 48 years old on the date of the accident, but also the other claimants who were younger brothers and sisters of the deceased, in the facts of the case, the multiplier of 13 would be justified. The dependency benefits for the claimants would, therefore, work out at Rs.18,000 x 13 = Rs.2,34,000/-. To this, we may add a sum of Rs.25,000/- for loss to the estate and Rs.5,000/- for funeral charges. The claimants would, therefore, in all receive Rs.2,64,000/-. Since the Tribunal has already awarded a sum of Rs.1,13,800/-, the claimants under this appeal would receive additional sum of Rs.1,50,200/-. The additional amount shall carry interest at the rate of 9% per annum from the date of the claim petition till actual payment. The opponents shall deposit the said sum alongwith interest and proportionate costs before the Tribunal latest by 31st March, 2007.

10. Upon such deposit, the Tribunal shall invest 80% of the amount in fixed deposits in any nationalized bank near the residence of the claimants

for a period of five years, with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, with permission to appellant Nos. 1 and 2 (parents of the deceased) to withdraw interest periodically accruing on the fixed deposits and with a direction to the bank not to permit the accounts to be operated by any power of attorney holder other than a close relative of the claimants.

The balance amount shall be paid over to appellant Nos. 1 and 2 (parents of the deceased) by account payee cheques after proper verification and after informing them about the amounts being invested/disbursed and the terms and conditions of the investment.

11. With these directions, the appeal is disposed of.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-